

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

| | | |
|---------------------------------|---|--------------------------|
| JERMAINE DUTRIELLE, |) | |
| |) | 2:10cv1562 |
| Petitioner, |) | Electronic Mail |
| |) | |
| v. |) | |
| |) | Judge Cercone |
| COMMONWEALTH OF |) | Magistrate Judge Lenihan |
| PENNSYLVANIA; HON. RAYMOND A. |) | |
| NOVAK; HON. JEFFREY MANNING; |) | |
| DISTRICT ATTORNEYS; ROBERT |) | |
| COLVILLE; STEPHEN ZAPPALA, JR.; |) | |
| SUPERINTENDENT, S.C.I. |) | |
| GREENSBURG and MR. |) | |
| MAZURKIEWICZ, |) | |
| |) | |
| Respondents. | | |

MEMORANDUM ORDER

On November 23, 2010, the above captioned case was initiated by the filing of a Petition for Writ of Habeas Corpus and was referred to a United States Magistrate Judge for pretrial proceedings in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and the Local Rules for Magistrate Judges.

The Magistrate Judge's Report and Recommendation filed on August 30, 2011 (ECF No. 13) recommended that the Petition for Writ of Habeas Corpus be dismissed as untimely and that a certificate of appealability be denied. On September 13, 2011, the envelope containing the Report and Recommendation was returned to the Court marked DECEASED.

A petitioner's attack on a criminal conviction or sentence in federal court is rendered moot by the death of the petitioner. *See* Lockhart v. McCree, 476 U.S. 162, 168 n. 2 (1986); McClendon v. Trigg, 79 F.3d 557 (7th Cir. 1996); Nonnenberg v. Commonwealth of Pennsylvania, Civil No. 08-

1512, 2009 WL 260997, 2 (M.D. Pa. Feb. 4 2009). And even assuming the form of notice is not sufficient to establish the death of the petitioner, the Petition is subject to dismissal for the reasons set forth in the magistrate judge's Report and Recommendation of August 30, 2011. As such, the following order is entered.

AND NOW, this 27th day of October, 2011;

IT IS HEREBY ORDERED that the Petition for Writ of Habeas Corpus is **DISMISSED**.

IT IS FURTHER ORDERED that the Motion to Dismiss (ECF No. 11) is **GRANTED**.

IT IS FURTHER ORDERED that a certificate of appealability is **DENIED**.

IT IS FURTHER ORDERED that the Clerk of Court mark this case **CLOSED**.

The magistrate judge's report and recommendation of August 30, 2011 (Doc. No. 13) as augmented herein is adopted as the opinion of the court.

s/ David Stewart Cercone
David Stewart Cercone
United States District Judge

cc: Counsel of record.